EXHIBIT A

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,100	04/07/2004	Zhong Dong	M-15295 US	8965

32605 7590 04/16/2008

MACPHERSON KWOK CHEN & HEID LLP
2033 GATEWAY PLACE
SUITE 400
SAN JOSE, CA 95110

EXAMINER	
VU, DAVID	

ART UNIT	PAPER NUMBER
2818	

MAIL DATE	DELIVERY MODE
04/16/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10821100	4/7/04	DONG ET AL.	M-15295 US

MACPHERSON KWOK CHEN & HEID LLP
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EXAMINER	
DAVID VU	
ART UNIT	**PAPER**
2818	20080414

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The reply brief filed on March 20, 2008 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

/DAVID VU/
Primary Examiner, Art Unit 2818

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARRY GAMMON

Appeal 2008-1420
Application 10/783,812
Technology Center 3700

Decided: June 13, 2008

Before HUBERT C. LORIN, LINDA E. HORNER, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

Gammon (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-6. We have jurisdiction under 35 U.S.C. § 6(b) (2002). This appeal includes a record that is not ripe for review and pursuant to 37 C.F.R. § 41.50(a)(1) (2007), we remand this application to the

Examiner to take appropriate action consistent with our comments below. 37 C.F.R. §§ 41.35(b) and 41.50(a)(1) (2007).

The record is not ripe for review for the following reason.

The Appellant, in the Appeal Brief filed on September 15, 2006, did not respond to the Examiner's position in the Final rejection mailed on July 21, 2005, see page 6, that the declaration was insufficient to overcome the 35 U.S.C. § 102(b) rejection, for which it was submitted. The Appellant, nevertheless, see Appeal Brief at page 8, makes a cursory cite to that same declaration during the discussion of the 35 U.S.C. § 102(b) rejection. The Examiner, in the Answer, should have, but did not, then explicitly address this cursory cite to the declaration. In order to make the record clear, the Examiner should clarify whether he maintains the position he took in the Final rejection that the declaration is insufficient to overcome the 35 U.S.C. § 102(b) rejection.

ORDER

Accordingly, it is ORDERED that the application is remanded to the Examiner:

1) for the Examiner to clarify the Examiner's position regarding the declaration submitted by the Appellant as Appendix B to the Appeal Brief.

2) for such further action as may be appropriate.

This remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies if a Supplemental Examiner's Answer is written in response to this remand by the Board.

REMANDED

hh

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EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VICTOR V. GUDAS,
MICHAEL A. REEED,
PHILIP G. SCHNELL,
HENRY T. TYRPIN,
MICHAEL J. GREENBERG
and FRED R. WOLF

Appeal 2007-4149
Application 10/280,688
Technology Center 1700

Decided: May 22, 2008

Before EDWARD C. KIMLIN, JEFFREY T. SMITH, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

This is an appeal from the final rejection of claims 1-27 and 30-34.

Claim 1is illustrative:

1. A method of producing a chewing gum product containing a physically-modified bitterness inhibitor in order to control the release rate of the bitterness inhibitor comprising the steps of:

a) mixing a quantity of a bitterness inhibitor with a modifying agent in such a way so as to produce said physically-modified bitterness inhibitor, the bitterness inhibitor being selected from the group consisting of glucono delta lactone; sodium gluconate, potassium gluconate; neodiosmin; cyclotetradecenones, sclareolide; natural soy flovor; N-sulfomethyl-N-arylureas; sodium, potassium and ammonium salts of ferulic acid and caffeic acid; 2, 4-dihydroxyl benzoic acid; ferulic acid; sodium ascorbate; sodium acetate; sodium glycinate; calcium glyerolphosphate; sodium glycerolphosphate and mixtures thereof;

b) adding a quantity of the physically-modified bitterness inhibitor and a bitter medicament to a chewing gum formulation to provide a bitterness inhibitor level in the chewing gum formulation of from about 0.5% to about 8.0%.

As evidence of obviousness, the Examiner relies upon asserted admitted prior art and the references cited at page 3 of the Answer.

Appellants' claimed invention is directed to method of producing a chewing gum comprising a bitter substance, such as a medicament, and a bitterness inhibitor selected from the Markush group recited in independent claims 1 and 18.[1] The bitterness inhibitor is modified to control its release rate in the chewing gum.

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

(a) claims 1-22, 26, 27, and 32 over Patel in view Cherukuri,

(b) claims 1-22, 26, 27, and 32 over Patel in view of Suzuki;

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[1] Independent claims 24 and 25 do not recite any particular bitterness inhibitor.

(c) claims 23-25, 30, and 31 over Patel in view of Cherukuri or Suzuki in view of Yatka, and

(d) claims 33 and 34 over Patel in view of Cherukuri or Suzuki.

Patel, the "primary" reference in all the rejections under 35 U.S.C. § 103(a), discloses chewing gum comprising encapsulated salts as a bitterness inhibitor for mint type favors that are also contained in the chewing gum. As recognized by the Examiner, Patel does not disclose any of the specifically claimed bitterness inhibitors. To make up for this deficiency in Patel, the Examiner cites page 2 of Appellants' Specification for an asserted admission that many of the claimed bitterness inhibitors were well known in the art (*see* Ans. 4, first two complete sentences). The Examiner draws the legal conclusion that it would have been obvious for one with ordinary skill in the art to substitute one of the presently claimed, admittedly well known bitterness inhibitors for the encapsulated salts of Patel.

Appellants, in their Reply Brief, expressly state that they "do not admit on page 2 that any bitterness inhibitors are 'well known'" (Reply Br., sentence bridging pages 2-3). Appellants go on to state that "[p]age 2 merely points out some ideas disclosed in previously published patents where certain items were suggested as useful to reduce bitterness of other compounds in specific applications" (Reply Br., 3, first para.). Appellants further state that "[c]ertainly Applicants make no admission that any of the items are well known bitterness inhibitors" (*id.*).

In the face of Appellants' express repudiation of any admitted prior art asserted by the Examiner, and the Examiner's reliance on this assertion as essential to his conclusion of obviousness, the present appeal is not ripe for

our decision. Significantly, the Examiner did not respond to this argument of Appellants which does not appear in the principal Brief. The Examiner only noted and entered the Reply Brief.

Accordingly, this application is remanded to the Examiner so that he may include in the statement of the § 103 rejections the specific prior art cited at page 2 of Appellants' Specification that is relied upon as evidence of the obviousness of adding the specifically claimed bitterness inhibitors in the chewing gum of Patel. The Examiner should consider prior art that teaches any of the claimed compounds as bitterness inhibitors, while also considering whether any of the claimed compounds were known to be bitterness inhibitors for medicaments or similar materials. Again, we must emphasize that not all the claims on appeal recite specific bitterness inhibitors (see claims 24 and 25).

This Remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. 41.50(a)(2) applies if a Supplemental Examiner's Answer is written in response to this remand by the Board.

This application, by virtue of its Aspecial@ status, requires ***immediate*** action by the examiner. *See* MPEP ' 708.01(d). The Board of Patent Appeals and Interferences ***must*** be informed promptly of any action affecting the appeal in this case, including reopening of prosecution, allowance and/or abandonment of the application.

REMANDED

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